

Application No. : 09/904,885
Amdt. Dated : April 27, 2006
Reply To O.A. Of : January 27, 2006

REMARKS

The Applicant thanks the Examiner for his careful and thoughtful examination of the present application. By way of summary, Claims 1-25 were pending, Claims 14-24 were withdrawn. In the present amendment, the Applicant has canceled Claims 14-24 without prejudice or disclaimer, amended Claims 1-5, 8-13 and 25, and added new Claims 26-31. Accordingly, Claims 1-13 and 25-31 remain pending for consideration.

Rejection Of Claims 1-13 Under 35 U.S.C. § 112, ¶ 2

The Office Action rejected Claims 1-13 under 35 U.S.C. § 112, ¶ 2, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter for which applicant regards as the invention. Specifically, the Office Action objected to the lack of referencing elements of the preamble as antecedents of elements in the claim body. In response, the Applicant has amended the claims to reference the preamble elements as antecedents. Therefore, the Applicant respectfully requests withdrawal of the § 112, ¶ 2 rejections of Claims 1-13.

Rejection Of Claims 1-4, 8-13 and 25

The Office Action rejected Claims 1-4 and 8-13 under 35 U.S.C. § 102(b) as being anticipated by U.S. patent no. 6,045,509, issued to Caro. Moreover, the Office Action rejected Claims 1-4, 8-13 and 25 under 35 U.S.C. § 103 as being unpatentable over the Caro patent. The Applicant respectfully traverses these rejections because the Caro patent fails to identically teach or suggest every element of the amended claims. See M.P.E.P. § 2131 (stating that in order to anticipate a claim under § 102, a prior art reference must *identically* teach every element of the claim); see also § 2143 (stating that in order to establish a *prima facie* case of obviousness for a claim under § 103, the prior art references must teach or suggest *all* the claim limitations).

As discussed in the present Specification, the Applicant discloses and claims a patient monitor operable in a non-continuous mode or configuration to completely and *non-continuously* monitor the blood pressure of a patient. Upon industry acceptance and/or appropriate agency approval, the same monitor may be operable in a continuous

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mode or configuration to also completely and now *continuously* monitor the blood pressure of a patient. However, the change from non-continuous to continuous monitoring may never happen, or at least may not happen for years. Thus, at least one new and novel feature of the claimed patient monitor is its use as a stand alone non-continuous blood pressure monitor until a point in the future when it can be changed to a continuous mode of operation. Such non-continuous monitoring is intended to be a complete blood pressure monitoring solution for a particular patient.

Independent Claims 1, 25, and 29 recite stand alone use in a non-continuous mode or configuration as follows:

1. A method of operating a continuous multi-mode blood pressure monitor . . . comprising:

when the continuous blood pressure sensor signal is not received, operating the blood pressure monitor in a non-continuous configuration . . . , wherein during the non-continuous configuration, the blood pressure monitor is not primarily seeking to determine, initialize or calibrate continuous measurements . . . , wherein the monitor is capable of operating in said non-continuous configuration to monitor a patient during an entire time the patient is to be monitored for blood pressure.

25. A method of providing a multi-mode blood pressure monitor, comprising:

providing the monitor for use as a non-continuous blood pressure monitor capable of non-continuously monitoring blood pressure of a patient during an entire time the patient's blood pressure is to be monitored, wherein the monitor includes a continuous measurement mode which is disabled during said use as a non-continuous blood pressure entire time; and

providing said monitor for use as a continuous blood pressure monitor capable of continuously monitoring blood pressure of another patient, wherein a continuous measurement mode is enable during monitoring of said another patient.

In contrast to the foregoing claims, Caro simply acquires non-continuous datapoints for calibration of a continuous mode monitor. The Office Action cites to the Caro patent stating:

Caro discloses that the blood pressure monitor is first calibrated by using the blood pressure cuff After the calibration step is

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completed, the monitor can be used in a continuous mode. See page 3.

Accordingly, the Caro patent simply discloses obtaining a non-continuous calibration reference for a *continuous mode only* monitor. The Caro patent fails to teach or suggest two modes of operation for patient monitoring, each mode viable to completely monitor a patient during the patient's time under care. Thus, the Applicant submits that the Caro patent fails to identically teach or suggest each and every element of independent Claims 1, and 25. Accordingly, the Applicant requests withdrawal of the rejections of the independent claims.

Moreover, Claims 2-13 depend from Claim 1 and are patentable for the same reasons articulated above and because of the additional features recited therein.

New Claims

New Claims 26-28 and 30-31 also depend from Claims 25 and 1, respectively, and are believed to be fully distinguished over the prior art of record. Specifically, Claims 27-28 and 30 recite mechanisms for switching the monitor from one mode to another.

Moreover, new independent Claim 29 recites:

29. A dual mode patient monitor comprising:

a non-continuous sensor input;
a continuous sensor input; and

a processor capable of operating in a stand alone non-continuous measurement mode to non-continuously monitor blood pressure of a patient during an entire time the patient's blood pressure is to be monitored, . . . , and wherein said processor operates in said continuous measurement mode to continuously monitor blood pressure of another patient.

Accordingly, Claim 29 is also believed to be fully distinguished over the prior art of record.

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Request For Telephone Interview

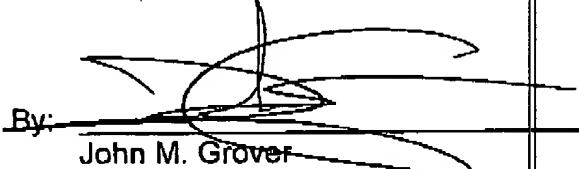
In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Applicant's undersigned attorney of record hereby formally requests a telephone interview with the Examiner. The Applicant's attorney can be reached at (949) 721-2946 or at the number listed below.

In addition, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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Dated: April 27, 2006

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